

REMARKS

The preceding claim amendments and the following remarks are submitted as a full and complete response to the Office Action issued on June 4, 2008. Claims 18 and 20 have been amended to recite MP52 as the bone morphogenetic factor and claim 19 has been cancelled in view of the amended claim 18. No new matter has been introduced.

Applicants respectfully submit that the claim amendments together with Applicants' clarification on the ownership of the cited prior art references, effectively render the present application allowable. Thus, Applicants respectfully request entry of the claim amendments and favorable reconsideration of the application.

Rejection of Claims 18-20 under 35 U.S.C. §112, first paragraph

The examiner has maintained the rejection of claims 18-20 for lack of written description, that is, for new matter. While Applicants pointed to the support from the specification for these claims in the previous response, the Office refused to accept it based on the reason that claim 18 is generic to any bone morphogenetic factor while the disclosure indicated by Applicants is specific to MP52. While not acquiescing to the propriety of the Office's position in this allegation, Applicants have amended claim 18 to recite MP52 only as the bone morphogenetic factor recited in claim 18. In view of the amendment of claim 18, claim 19 has been cancelled and claim 20 has been amended to depend from claim 18. Applicants respectfully submit that the amended claims 18

and 20 are fully supported by the description of the original specification. Favorable reconsideration and withdrawal of this rejection are respectfully requested.

Rejection of Claims 1-8 and 16-20 under 35 U.S.C. § 103(a)

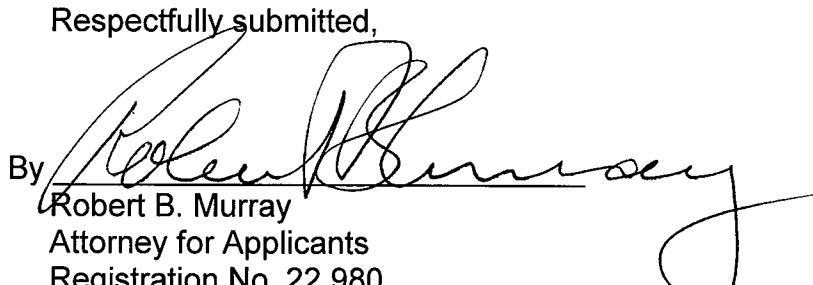
The Office has maintained the rejection of claims 1-8 and 16-20 under 35 U.S.C. §103 as obvious over Andou et al. (U.S. Patent No. 6,551,801) in view of Hötten et al. (U.S. Patent No. 6,972,321). The Office has objected to the declaration previously submitted by Applicants alleging that the declaration only provides an unsupported statement without any showing. Applicants respectfully traverse this rejection.

The previous Office Action proffered several options that Applicants can take to overcome this rejection. Applicants have found that multiple of those options are applicable to the present application in connection with the cited prior art reference. In view of the Office's position on the previous Declaration, Applicants chose to rely on the fact that the claimed invention and the two cited prior art references –Andou et al. and Hötten et al.-were owned by the same person at the time the claimed invention was made. Thus, under 35 U.S.C. §103(c), the cited prior art references are disqualified as prior art against the claimed invention. Accordingly, the current rejection becomes moot under 35 U.S.C. §103(c). Applicants respectfully request withdrawal of this rejection.

In view of the foregoing, it is submitted that the present application is now in condition for allowance. Reconsideration and allowance of the pending claims are

Serial No. 10/734,583
Response to June 4, 2008 Office Action

requested. The Director is authorized to charge any fees or overpayment to Deposit Account No. 02-2135.

Respectfully submitted,

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